IN THE HIGH COURT OF BOMBAY AT GOA
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CRIMINAL WRIT PETITION NO. 37 OF 2002

1. Guru Rathod, s/o
Gopal Rathod, major,
c/o Peter Ferrao,
H. No.64-A, Boryebhat,
Arlem, Salcete, Goa
and native of Bagewadi,
Bijapur,

2. Mallappa Mathure,
s/o Basappa Mathure,
major, c/o Peter
Ferrao, H. No. 64-A
Arlem, Raia, Boryebhat,
Salcete, Goa, and native
of Bagalkot, Karnataka,

3. Domingo Cardozo,
s/o Mariano Cardozo,
major, r/o House No.60,
Boryebhat, Arlem,
Salcete, Goa, and

4. Pedro Ferrao, major
in age, r/o Row Village
No.2, C.D. Marygold,
Ambajim, Fatorda,
Salcete, Goa. ... Petitioners.

Versus

S T A T E
through C.I.D. Crime
Branch, Panaji, Goa. ... Respondent.

Shri P. A. Kholkar, advocate for the petitioners.

Shri A. P. Lawande, Public Prosecutor for the State.

CORAM: P. V. KAKADE, J.

DATE: 17th October, 2002.

ORAL ORDER

The petitioners in this Criminal Writ Petition have preferred this petition challenging the Order passed by the learned Sessions Judge, South Goa, Margao, dated 7th August, 2002, in Criminal Revision Application No.27 of 2002,

dismissing their revision petition which was preferred against the Order dated 5th April, 2002 passed by the learned Chief Judicial Magistrate, Margao in Special Criminal Case No.233/S/98/A, whereby the learned Magistrate discarded the plea of the petitioners to discharge them and directed that the charge be framed against the petitioners/accused persons under Sections 379, 407, 109 read with Section 34 of the Indian Penal Code and Section 2(e)(ii) of the Motor Spirit and High Speed Diesel (Prevention of Malpractices In Supply And Distribution Order 1990 read with Section 7 of the Essential Commodities Act, 1955), on 30th April, 2002.

2. Heard learned counsel for the petitioners as well as learned Public Prosecutor. The case of the prosecution is that on 26th March, 1997, between 19.30 hours to 21.15 hours at Arlem, Raia, Salcete, Goa, the petitioners nos.1, 2 and 3/accused nos.1, 2 and 3 were caught red-handed while committing theft of petroleum products, i.e. kerosene and diesel from tanker bearing registration no. GA-02-T-5796, which was entrusted to petitioner no.4/accused no.4 Peter Ferrao, by Hindustan Petroleum Corporation Ltd., Vasco da Gama, to be delivered to M/s Lotlikar House of Petroleum, Ponda, Goa. During the raid one plastic can of 20 litres containing 15 litres of diesel, one tin container with metal funnel of 20 litres capacity containing 15 litres of diesel, two plastic containers of 35 and 20 litres

capacity filled with kerosene alongwith other implements were sealed under a panchanama. The petitioner no.4/accused no.4 Pedro (Peter) Ferrao allegedly connived with accused nos. 1, 2 and 3 and abetted the commission of the offence of theft of petroleum products.

They were arrested in due course and were released on bail. At the time of framing charge, advocate for the petitioners made a plea for discharge on various grounds, which was rejected by the learned Chief Judicial Magistrate, Margao and he directed to frame charge for the impugned offences against which the revision was filed before the learned Sessions Judge, Margao. After hearing both the sides on merits, the learned Sessions Judge finally restricted the charge for commission of offences under Section 379 read with Section 34 of the Indian Penal Code and Section 7 read with Section 3 of the Essential Commodities Act, 1955 read with Section 2(e)(ii) of the said Order and directed the learned Chief Judicial Magistrate to frame charge against the petitioners/accused accordingly and proceed with the trial.

3. At the outset, in the course of his arguments, the learned counsel for the petitioners raised a few questions, including that there was no prima facie evidence on record against the accused no.4 and, therefore, claimed discharge of accused no.4 from the case, at this stage

itself. However, a perusal of the entire record shows that throughout, the case of the prosecution is that the petitioner no.4/accused no.4 connived with the accused nos. 1 to 3 and abetted the impugned offences and, in fact, he was the master-mind behind the commission of the said offences. It was further submitted on behalf of the petitioners that the Police Inspector could not have investigated the case because such officers were appointed under Clause 7 of the Motor Spirits and High Speed Diesel (Prevention of Malpractices In Supply And Distribution) Order 1990 for the purpose of investigation and, therefore, the investigation is bad in law. I prefer to disagree with this submission. Section 10-A of the Essential Commodities Act provides that notwithstanding anything contained in the Code, every offence punishable under the said Act shall be cognizable under Clause 7 of the Order and provides for power of search and seizure, and Sub-section (1) thereafter, inter alia, provides that any officer of the State Government, not below the rank of an Inspector in the Department of Food and Civil Supplies, duly authorized and notified in the Official Gazette by such State Government, or any other competent Officer empowered under the said Order, shall be entitled to act accordingly. It is to be noted that the power of search and seizure given by Clause 7 of the Order would be in addition to the powers given to a Police Officer under Section 10-A of the Essential Commodities Act, which position is made clear in the case of

Chandrakant Pinayamal Motwani vs. **State of Maharashtra,** (2000 Cri.L.J. 1935). In view of this position, the argument that investigation made by a Police Officer is bad in law cannot survive.

It was further urged on behalf of the petitioners that the Police Officer who has investigated the offence has also filed the F.I.R., which is illegal and, therefore, the F.I.R. is liable to be struck off. I also do not agree with this proposition. There is no legal bar for a Police Officer of the rank of Police Inspector to investigate the offence and thereafter to file the F.I.R. itself. The learned counsel for the petitioners also sought to place reliance on the ruling of the Supreme Court in the case of **Megha Singh** vs. **State of Haryana,** (AIR 1995 SC 2339). However, what is observed by the Supreme Court in that case is that the Head Constable who had arrested the accused and conducted the search had also filed the formal F.I.R. and, therefore, such practice should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation. However, it must be remembered that in this case the petitioners have not challenged the investigation on the ground of fairness and impartiality, but only a technical objection is raised that the investigating officer is also the complainant, which, in my view, under the circumstances, could not be avoided and hence, it must be noted that this aspect would not be sufficient to discharge

the petitioners at this stage itself. It may further be noted that now it is settled legal position that a defective investigation can never be the basis for acquitting the accused and the story of the prosecution has got to be examined dehors such defects, if any. Therefore, the investigation by the same officer who files the complaint would, at the most be an impropriety and cannot be considered by a Court at the stage of framing of charge. What weight it should be given can only be examined at the trial, after the evidence is recorded.

4. Further, it was sought to be urged that the Oil Company involved in this case, namely Hindustan Petroleum Corporation, or M/s Lotlikar House of Petroleum, have not filed any complaint. In this regard, I must note that a cognizable offence has been committed and the accused persons were found involved in the case with prima facie evidence on record and, therefore, it is of no consequence whether the petroleum company has filed formal complaint or not.

5. Be that as it may, the facts involved in the case are sufficient to show that there is adequate prima facie evidence on record, not only against the petitioners no. 1 to 3/accused nos. 1 to 3, but also against the petitioner no.4/accused no.4 to put them for trial after framing the charge for offences punishable under Section 379

read Section 34 of the Indian Penal Code and Section 7 read with Section 3 of the Essential Commodities Act, 1955, read with Section 2(e)(ii) of the said Order.

6. In the result, there is no substance in the Writ Petition and the Writ Petition therefore stands dismissed.

P. V. KAKADE, J.

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